IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.29933 of 2008
LOLA @ RAJU @ LALA @ RAJU MAHTO, son of late Rajendra Mahto alias Jitendra Mahto, resident of village Sandalpur, P.S. Sultanganj, District – Patna
Versus
STATE OF BIHAR

3/ 03.02.2009 Perused letter no. 41 dated 27.1.2009 of the Additional Sessions Judge – XI, Patna by which he has solicited time to conclude the Sessions Trial No. 1311 of 2006 as also necessary direction from this court.

The learned Judge has indicated that charges against the accused Raju was framed on 5.10.2007 and the prosecution had examined only two witnesses up till 27.1.2009 i.e. over a year of the framing of charges. It has also been pointed out that warrant of arrest non bailable, was issued against other material witnesses through the Senior Superintendent of Police, Patna but the police has not executed warrants against any of them.

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This court has repeatedly pointed out that the production of witnesses could be procured effectively by issuing notice to the Officer Incharge of the police station by which the case has been investigated into by appending thereto a list of witnesses who are required to be produced before the court with a further direction to the Investigating officer to be present with the witnesses for their evidence. This could be done by the aid of section 172 of the Code of Criminal Procedure and a decision of the Apex Court in the case of Shailendra Kumar Vs. State of Bihar, reported in AIR 2002 SC 270.

The trial court could also look to the provision of section

309 of the Code of Criminal Procedure and saddle the prosecution with appropriate cost for seeking unnecessary adjournments with a direction to realize the cost either from the salary of the Officer Incharge of the police station or from the fees of the Additional Public Prosecutor. In appropriate cases, the court should consult the provision of Penal Code specially section 228 of the Indian Penal Code and file a complaint for causing disruption in the judicial proceeding or not executing the warrant of arrest issued by the court for producing the witnesses. The officer in the rank of Additional Sessions Judge, it is assumed, could be quite experienced to be aware of these provisions and the court could not appreciate that it has to be pointed out to the aforesaid officer .

Let the trial be concluded within two months else he should submit an explanation to this court as to why it should not be treated as inefficiency of the Judge.

With the aforementioned observation/direction, the petition is dismissed.

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Anil/ **(Dharnidhar Jha, J.)**